



the Rosebud Sioux Reservation. It is not Indian Country as that term is defined by federal law. Activities at the Spirit Camp are simply not relevant to any issue before the Commission in this proceeding. Accordingly, Ms. Antoine's testimony in that regard is irrelevant and should be stricken.

Part two of Ms. Antoine's filing is not testimony. Ms. Antoine first summarizes certain findings from the 2009 hearing. The findings speak for themselves. In essence, she is reciting her impression of what the findings mean. Her impressions of the findings are irrelevant and immaterial to this proceeding and are not evidence.

After summarizing the findings, Ms. Antoine summarizes the testimony of certain Keystone witnesses. Her summary of the testimony of other witnesses is incompetent as evidence. Her impressions of other witnesses' testimony are not evidence and are irrelevant and immaterial. She is then asked "Does it appear to you that Keystone has put in sufficient evidence and testimony regarding [certain findings]?" Her opinion of whether or not Keystone has met its burden of proof is simply argument, not a statement of fact, and is incompetent as evidence. It is not evidence of anything other than her opinion. The Commission is the trier of fact and decision maker. Ms. Antoine's opinion invades the province of the trier of fact and offers no value to these proceedings. Accordingly, it should be stricken.

Part three of Ms. Antoine's filing is a direct challenge to the final Order in the 2009 docket that underlies this proceeding. The soliloquy starts with the question "Have you reviewed Michael Madden's testimony and report. . .from the HP-09-001docket?" It then goes on to discuss her perceived failings in Madden's 2009 testimony and report. She concludes by linking those perceived failings to certain 2010 findings of fact, and then with a leap of logic, argues that Keystone cannot meet its 2015 certification burden because of the flaws identified in the 2009

Madden evidence. Her statements are a mix of argument, her perceptions of failings in testimony that can no longer be challenged, and legal conclusions. Her statements are not evidence, not statements of fact relevant to the proceedings in issue, but rather an argument based on her feelings and impressions. The statements are not competent as evidence and not relevant. The time to challenge the Madden testimony was 2009. Any attempt to do so now under the guise of linking it to recertification is inappropriate and should not be allowed.

For those reasons, Applicant respectfully requests the Commission enter its order prohibiting Ms. Antoine from testifying in the hearing on Applicant's certification petition and striking her pre-filed testimony from the record.

Dated this 10th day of July, 2015.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of July, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Motion in Limine to Strike Paula Antoine's Rebuttal Testimony, to the following:

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